



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

201320022

FEB 19 2013

Uniform Issue List: 9100.00-00; 408A.00-00

Legend:

Taxpayer = \*\*\*  
Custodian = \*\*\*  
Attorney = \*\*\*  
Amount A = \*\*\*  
Amount B = \*\*\*  
Amount C = \*\*\*  
Amount D = \*\*\*  
Year 1 = \*\*\*  
Year 2 = \*\*\*  
Year 3 = \*\*\*  
IRA X<sub>1</sub> = \*\*\*  
IRA X<sub>2</sub> = \*\*\*  
IRA Y<sub>1</sub> = \*\*\*  
IRA Y<sub>2</sub> = \*\*\*

T:EP:RA:T2

Dear \*\*\*:

This is in response to your letter dated September 6, 2012, submitted on your behalf, by your authorized representative, in which you request relief under section 301.9100-3 of the Procedure and Administrative Regulations (the "Regulations").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer requested that Amount A and Amount B be transferred from IRA X<sub>1</sub> and IRA X<sub>2</sub>, traditional IRAs described in section 408 of the Internal Revenue Code (the "Code"), on May 4 and 26 of Year 1, respectively, to IRA Y<sub>1</sub> and IRA Y<sub>2</sub>, Roth IRAs described in section 408A of the Code, respectively, as Roth IRA conversions.

Taxpayer relied on the advice of his attorney, Attorney, regarding the overall tax consequences of converting a Traditional IRA to a Roth IRA. Per the submission, Taxpayer was first notified of the error in his Roth IRA conversions on June 1, Year 3.

On February 18, Year 1, Taxpayer consulted with Attorney regarding whether Taxpayer was eligible to convert his traditional IRAs, (IRA X<sub>1</sub> and IRA X<sub>2</sub>) to Roth IRAs

(IRA Y<sub>1</sub> and IRA Y<sub>2</sub>). On this same date, Attorney advised Taxpayer that he was eligible to convert his traditional IRAs to Roth IRAs.

Attorney advised Taxpayer that more information would be needed to determine the actual tax consequences of the Roth IRA conversions. Attorney further advised that Roth IRA conversions made in Year 1 could be re-characterized on or before October 17, Year 2. Taxpayer and Attorney agreed that Taxpayer could proceed with the Roth IRA conversions with the understanding that the conversions may be re-characterized if necessary.

Subsequent to the conversions, on May 26, Year 1, Taxpayer and Attorney held a teleconference to discuss the tax consequences of the Roth IRA conversions. Attorney and Taxpayer discussed how the calculation of Taxpayer's basis in IRA X<sub>1</sub> and IRA X<sub>2</sub> ultimately determines the tax consequences of the Roth IRA conversions. As a result of the teleconference, Taxpayer believed that only Amount C of the total amount converted would be taxed.

In Year 2, during the tax preparation of Taxpayer's Year 1 income tax return, Attorney acquired the Taxpayer's basis in IRA X<sub>1</sub> and IRA X<sub>2</sub> from Custodian. Custodian provided Attorney with information showing the total cost basis as Amount D. Attorney included this amount in the Year 1 tax return as the adjusted basis for IRA X<sub>1</sub> and IRA X<sub>2</sub>.

On June 1, Year 3, Attorney reviewed the Year 1 income tax return in preparation for the filing of the Year 2 income tax return and noticed that the adjusted basis reported on the Taxpayer's Form 8606 appeared to be unusually high. Attorney immediately contacted the Taxpayer about his concerns. Attorney contacted Custodian to discuss the irregularity in the basis amounts and it was ultimately determined that the cost basis information received by Custodian was the cost basis of the securities held by IRA X<sub>1</sub> and IRA X<sub>2</sub> and not the adjusted tax basis of IRA X<sub>1</sub> and IRA X<sub>2</sub>. All parties agreed that the adjusted basis was actually \$0. Attorney represented that he did not realize this and "mistakenly understood" that the unusually high figure received from Custodian was not Taxpayer's adjusted basis until after the deadline for re-characterizing Taxpayer's Roth IRA conversions.

Per the submission, if Taxpayer had been informed that his basis in IRA X<sub>1</sub> and IRA X<sub>2</sub> was \$0 rather than Amount D before making the Roth IRA conversions, Taxpayer would not have elected to make the conversions. Taxpayer further represented that he would have timely re-characterized his Roth IRAs, (IRA Y<sub>1</sub> and IRA Y<sub>2</sub>), if he was advised of the error prior to the deadline for re-characterizing his Roth IRA conversions.

The statute of limitations on Taxpayer's Year 1 Federal Income Tax Return remains open.

Based on the foregoing facts and representations, you have requested a ruling that, pursuant to section 301.9100-3 of the Regulations, Taxpayer may be granted an extension to make an election under section 1.408A-5 of the Income Tax Regulations (the "I.T. Regulations") to recharacterize Amounts A and B as contributions to traditional IRAs.

With respect to your request for relief under section 301.9100-3 of the Regulations, section 408A(d)(6) of the Code and section 1.408A-5 of the I.T. Regulations provide that, except as otherwise provided by the Secretary, a taxpayer may elect to recharacterize an IRA contribution made to one type of IRA as having been made to another type of IRA by making a trustee-to-trustee transfer of the IRA contribution, plus earnings, to the other type of IRA. In a recharacterization, the IRA contribution is treated as having been made to the transferee IRA and not the transferor IRA. Under section 408A(d)(6) of the Code and section 1.408A-5 of the I.T. Regulations, this recharacterization election generally must occur on or before the date prescribed by law, including extensions, for filing the taxpayer's Federal Income Tax Return for the year of contribution.

Section 1.408A-5, Q&A-6, of the I.T. Regulations describes how a taxpayer makes the election to recharacterize the IRA contribution. To recharacterize an amount that has been converted from a traditional IRA to a Roth IRA: (1) the taxpayer must notify the Roth IRA trustee of the taxpayer's intent to recharacterize the amount, (2) the taxpayer must provide the trustee (and the transferee trustee, if different from the transferor trustee) with specified information that is sufficient to effect the recharacterization, and (3) the trustee must make the transfer.

Section 408A(c)(3) of the Code provides, in relevant part, that a taxpayer generally is not allowed to make a rollover contribution to a Roth IRA from an individual retirement plan other than a Roth IRA during any taxable year if the taxpayer's adjusted gross income for that year exceeds \$100,000.

Section 408A(d)(3)(C) provides that a conversion of a traditional IRA to a Roth IRA is treated as a rollover from the traditional IRA to the Roth IRA.

Sections 301.9100-1, 301.9100-2, and 301.9100-3 of the Regulations, in general, provide guidance concerning requests for relief submitted to the Service on or after December 31, 1997. Section 301.9100-1(c) provides that the Commissioner of Internal Revenue, in his discretion, may grant a reasonable extension of the time fixed by a regulation, a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin for the making of an election or application for relief in respect of tax under, among others, Subtitle A of the Code.

Section 301.9100-2 of the Regulations lists certain elections for which automatic extensions of time to file are granted. Section 301.9100-3 generally provides guidance with respect to the granting of relief with respect to those elections not referenced in

section 301.9100-2. The relief requested in this case is not referenced in section 301.9100-2.

Section 301.9100-3 of the Regulations provides that applications for relief that fall within section 301.9100-3 will be granted when the taxpayer provides sufficient evidence (including affidavits described in section 301.9100-3(e)(2)) to establish that (1) the taxpayer acted reasonably and in good faith, and (2) granting relief would not prejudice the interests of the Government.

Section 301.9100-3(b)(1) of the Regulations provides that a taxpayer will be deemed to have acted reasonably and in good faith (i) if its request for section 301.9100-1 relief is filed before the failure to make a timely election is discovered by the Service; (ii) if the taxpayer inadvertently failed to make the election because of intervening events beyond the taxpayer's control; (iii) if the taxpayer failed to make the election because, after exercising reasonable diligence, the taxpayer was unaware of the necessity for the election; (iv) the taxpayer reasonably relied upon the written advice of the Service; or (v) the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Section 301.9100-3(c)(1)(ii) of the Regulations provides that ordinarily the interests of the Government will be treated as prejudiced and that ordinarily the Service will not grant relief when tax years that would have been affected by the election had it been timely made are closed by the statute of limitations before the taxpayer's receipt of a ruling granting relief under this section.

The information presented and documentation submitted by Taxpayer, including an affidavit by Attorney admitting his error, is consistent with his assertion that after exercising reasonable diligence, his failure to elect to recharacterize the Roth IRAs, (IRA Y<sub>1</sub> and IRA Y<sub>2</sub>) on or before the date prescribed by law, including extensions, for filing his Federal Income Tax Return for the year of contribution, was caused by his lack of awareness of the necessity of making an election as a result of relying upon incorrect information provided to him by Attorney.

Based on the above, Taxpayer meets the requirements of section 301.9100-3(b)(1) of the Regulations, clauses (i) and (iii), for the Year 1 tax year. In addition, since the statute of limitations is still open, under section 301.9100-3(c)(1)(ii) of the Regulations, granting relief will not prejudice the interests of the Government.

Accordingly, Taxpayer is granted an extension of 60 days as measured from the date of the issuance of this ruling letter to recharacterize Amount A and Amount B contributions to traditional IRAs.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter assumes that the above IRAs qualify under either section 408 of the Code or section 408A of the Code at all relevant times.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

If you wish to inquire about this ruling, please contact \*\*\* at \*\*\*. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,

Donzell H. Littlejohn, Manager,  
Employee Plans Technical Group 2

Enclosures:

Deleted copy of this letter  
Notice of Intention to Disclose, Notice 437

Cc: \*\*\*